IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2807 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAHIL MUSABHAI SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/06/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 1-3-2000 passed by the District Magistrate, Bharuch and he has been declared as

bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner at length and learned AGP, Mr.S.J.Dave for the respondents. I have also perused the material on record. Learned advocate for the petitioner has restricted her arguments on the point that wife of the petitioner has sent a representation to the authority on 31-3-2000 and same has been decided by the authority on 13-4-2000 and, therefore, there is a delay on the part of authority in deciding the representation. Learned AGP has fairly admitted the same.

4. It has been held in a case of Rajammal Vs. State of Tamil Nadu and another reported in AIR 1999 S.C. page 684 more particularly at head note as under:

> "Detention-Unexplained delay of five days in considering and disposing detenu's representation-Mere absence of Minister at Headquarters not sufficient to justify delay-Detention vitiated."

The Apex Court quoted in the above referred judgment certain portion of a judgment delivered by a Constitutional Bench in K.M.Abdulla Kunhi and B.L.Abdul Khader V. Union of India, which reads thus:

> "It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be

dealt with. The requirement however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal".

It has been further held by the Apex Court in para 9 as under:

"The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation.It is not enough to say that the delay was very short. Even longer delay can as well be explained. so the test is not the duration or range of delay, but how it is explained by the authority concerned."

5. In the instant case representation has been sent on 31-3-2000, but it has been decided on 13-4-2000. In the judgment reported in Rajammal (supra), though there was a delay of five days only in considering and disposing detenu's representation, detention was held to be vitiated. Here in this case, there was a delay of 13 days in considering the representation and no satisfactory explanation has been put forward by the respondents. Therefore, case of the present petitioner is on the much better footing to that of case reported above. The petition succeeds only on this point and, therefore, learned advocate for the petitioner does not press other points.

6. In view of the above, the petition is allowed. The order of detention dated 1-3-2000 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Shahil Musabhai Shaikh is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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